

**JUL 19 2006**

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**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

SANDRA KELLEY,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 04-35161

D.C. No. CV-02-00204-LBE

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Montana  
Leif B. Erickson, Magistrate Judge, Presiding

Submitted June 6, 2006<sup>\*\*</sup>  
Seattle, Washington

Before: TALLMAN and BYBEE, Circuit Judges, and HUFF,<sup>\*\*\*</sup> District Judge.

The park rangers in Glacier National Park exercised judgment as to how to maintain safe trails, as no policy or regulation mentioned the removal of snow or

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The Panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

<sup>\*\*\*</sup> The Honorable Marilyn L. Huff, United States District Judge for the Southern District of California, sitting by designation.

ice from trails. *See Kelly v. United States*, 241 F.3d 755, 760-62 (9th Cir. 2001) (stating that discretion existed when safety policy did not mention, let alone prescribe a specific course of conduct). The maintenance manual vested park employees with broad discretion to decide how to maintain the trails (whether they were primary or steps constructed of wood) in a manner that implemented the general policy goals of promoting public safety (as well as protecting the natural resources and providing public access). *Blackburn v. United States*, 100 F.3d 1426, 1431 (9th Cir. 1996); *Valdez v. United States*, 56 F.3d 1177, 1179-80 (9th Cir. 1995); *Childers v. United States*, 40 F.3d 973, 975-76 (9th Cir. 1995); cf. *Oberson v. U.S. Dep't of Agric.*, 441 F.3d 703 (9th Cir. 2006); *Whisnant v. United States*, 400 F.3d 1177 (9th Cir. 2005).

We reject the argument that the court misstated facts or overlooked material disputed facts; rather, we conclude that the factual findings were not clearly erroneous. “Treading” a path across a drift of snow does not equate with snow removal from a trail. The record does not support the contention that a park ranger was instructed to remove snow from the elevated boardwalk near the visitor’s center; rather, he was delineating the side edges to prevent visitors from falling off the trail. Moreover, the ranger’s activity did not create a duty to warn visitors of ice on the wood steps. Accordingly, the court did not err in dismissing for lack of

subject matter jurisdiction under the discretionary function exception to the Federal Tort Claims Act. 28 U.S.C. §§ 1346(b), 2680(a).

**AFFIRMED.**